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Fox Television Stations, Inc.,  
Twentieth Century Fox Film Corp., and  
Fox Broadcasting Company, Inc.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

FOX TELEVISION STATIONS, INC.,  
TWENTIETH CENTURY FOX FILM  
CORP., and FOX BROADCASTING  
COMPANY, INC.

Plaintiffs,

v.

BARRYDRILLER CONTENT  
SYSTEMS PLC., BARRY DRILLER  
INC., AEREOKILLER, LLC, and  
DOES 1 through 3, inclusive,

Defendants.

Case No. CV12-6921-GW-JC

**PLAINTIFFS' APPLICATION TO  
FILE UNDER SEAL**

*lodged prep*

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CENTRAL DIST. OF CALIF.  
LOS ANGELES  
BY: *[Signature]*

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Pursuant to Civil Local Rule 79-5.1, Plaintiffs Fox Televisions Stations, Inc., Twentieth Century Fox Film Corp., and Fox Broadcasting Company, Inc., (collectively "Fox" or "Plaintiffs") respectfully seek this Court's approval to file certain documents produced by defendant Aereokiller, LLC ("Aereokiller") and excerpts of the person-most-knowlegeable deposition of Aereokiller under seal, as well as the brief portions of the Shepard Declaration and Memorandum of Points and Authorities in support of Fox's Motion for a Preliminary Injunction which refer to the produced documents and deposition transcript. These portions of the transcript and documents were designated by Aereokiller as Confidential or Highly Confidential under the Protective Orders approved by this Court on October 3, 2012 in this matter (Dkt. No. 30), and in the related matter, *NBCUniversal Media, LLC, et al. v. Barry Driller, Inc., et al.*, C.D. Cal. Case No. 12-cv-6950 on September 27, 2012 (Dkt. No. 31). *See* Shepard Declaration, ¶ 19, Ex. M. Aereokiller does not oppose this Application.

The Federal Rules expressly provide that, upon a showing of good cause, a court may enter an order "requiring that a trade secret or other confidential research, development, or commercial information not be revealed[.]" Fed. R. Civ. P. 26(c)(1)(G). Moreover, "'good cause' suffices to warrant preserving the secrecy of sealed discovery material attached to nondispositive motions," such as motions for a preliminary injunction. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).

To determine whether business information warrants filing under seal, courts consider: (i) the extent to which the information is known outside the business; (ii) the measures taken to guard the information's secrecy; and (iii) the value of the information to the business or its competitors. *Bean v. Pearson Educ., Inc.*, No. 11-8030, 2012 WL 2929631, at \*2 (D. Ariz. July 18, 2012); *see also Phillips ex rel. Estate of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002) (noting

1 that "courts have consistently granted protective orders that prevent disclosure of  
2 many types of information").

3 Here, Fox seeks only to seal excerpts of deposition transcripts and documents  
4 which Aereokiller designated either Confidential or Highly Confidential, as well as  
5 the portions of the Shepard Declaration and the memorandum of points and  
6 authorities that refer to the deposition transcript and confidential documents. Under  
7 the Protective Order, these designations are reserved for "pricing, rates,  
8 customers/subscribers, company security matters, customer lists, financial data and  
9 other non-public commercial, financial, research or technical information," or  
10 "trade secrets, special formulas, proprietary software and/or computer programs,  
11 current or future marketing plans, current or future business plans or strategies,  
12 current or future plans for products or services, customer and subscriber data and  
13 information, agreements with third parties, information regarding current or future  
14 business or financial transactions, internal financial reports or plans, current or  
15 future pricing, rates or planning information, financial data, production data,  
16 internal notes, memoranda, logs or other data, and other highly sensitive non-public  
17 commercial, financial, research or technical information that the producing party or  
18 non-party believes, in good faith, should be afforded the highest level of  
19 confidentiality by the Court," which are not "available to the general public."  
20 Protective Order ¶¶ 2, 4.

21 Because Aereokiller has designated the documents and portions of the  
22 deposition transcript attached as Exhibit M to the Shepard Declaration as  
23 Confidential or Highly Confidential, it has represented that these materials fit the  
24 criteria outlined in the Protective Order. Indeed, by designating these documents  
25 and portions of the transcript Confidential or Highly Confidential pursuant to the  
26 Protective Orders, Aereokiller is representing that if made public, disclosure of  
27 these confidential documents and deposition testimony would cause harm to  
28 Aereokiller's business operations and reveal trade secrets and other confidential or

1 proprietary information that Aereokiller has a strong interest in protecting from  
2 disclosure. *See id.* For these reasons, an order approving their filing under seal is  
3 warranted. *See Bean*, 2012 WL 2929631, at \*2; *Reilly v. MediaNews Grp. Inc.*, No.  
4 06-4332, 2007 WL 196682, at \*4 (N.D. Cal. Jan. 24, 2007) (finding good cause to  
5 maintain under seal sensitive business documents, filed in connection with requests  
6 for preliminary injunctive relief, that were designated confidential pursuant to the  
7 parties' stipulated protective order).

8 Accordingly, Fox respectfully requests that the Court grant its application to  
9 file Exhibit M to the Shepard Declaration under seal, as well as the portions of the  
10 Shepard Declaration and Preliminary Injunction motion that describe or discuss  
11 Exhibit M.

12  
13 Dated: November 8, 2012

JENNER & BLOCK LLP

14  
15 By: 

16 Julie A. Shepard  
17 Attorneys for Plaintiffs  
18 Fox Television Stations, Inc.,  
19 Twentieth Century Fox Film Corp.,  
20 and, Fox Broadcasting Company,  
21 Inc.  
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